

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FOUR

STATE OF MISSOURI,)	No. ED103401
)	
Respondent,)	Appeal from the Circuit Court of
)	the City of St. Louis
vs.)	1422-CR01694-01
)	
TREVOR C. FELDT,)	Honorable Robin R. Vannoy
)	
Appellant.)	Filed: March 7, 2017

Trevor C. Feldt was found guilty after a bench trial in the Circuit Court of the City of St. Louis of two counts of the class B felony of possession of child pornography and was sentenced to two concurrent terms of five years in prison. Feldt appeals asserting five points of error: (1) that the trial court plainly erred by conducting a bench trial without first obtaining a constitutionally adequate waiver of his right to a jury trial; (2) that the court abused its discretion by allowing the State to file an amended information that Feldt claims charged in Count II a different offense than any charged in the earlier substitute information; (3) that the three-year statute of limitations for the class B felony of possession of child pornography had run and thus the amended information charged a time-barred offense in Count II; (4) that the court abused its discretion by denying his motion to suppress the evidence regarding his possession of a video of child pornography on a computer seized pursuant to a warrantless search of the basement of a friend's house in which Feldt had been residing for twelve days; and (5) that there was insufficient evidence to support his conviction on Count I of the class B felony of possession of child pornography.

REVERSED AND REMANDED.

Division IV Holds: (1) The trial court plainly erred by conducting a bench trial where it was not unmistakably clear from the record that he knowingly, voluntarily, and intelligently waived his right to a jury trial, and neither such right nor the concept of its waiver was mentioned.

(2) The trial court did not abuse its discretion by allowing the State to file the amended information, since the amended information did not charge a different offense but merely corrected a clerical error as to the proper classification of the charge against Feldt in Count II of the substitute information for possessing the video of child pornography he stipulated was found on the computer seized from the basement where he stayed for twelve days.

(3) The three-year statute of limitations for the class B felony of possession of child pornography had not run, and the amended information did not charge a time-barred offense in Count II, because the State's initial complaint charged him with the same offense as all the subsequent charges, including the amended information, and thus the limitations period was tolled throughout the prosecution.

(4) The trial court did not abuse its discretion by denying Feldt's motion to suppress evidence because the investigating police officers who seized the computer and discovered the

evidence Feldt moved to suppress could reasonably have believed that Feldt's acquaintance, the owner of the home, had the authority to consent to a search of the basement of his home.

(5) There was sufficient evidence to support Feldt's conviction on Count I. We address this issue, even though we reverse for trial error as to Point I, because we are convinced that Feldt is entitled under principles of due process to the appellate review he requests of the sufficiency of the evidence as to Count I. *Burks v. United States*, 437 U.S. 1 (1978) and Missouri law, *see, e.g., State v. Hedrick*, 637 S.W.2d 306, 308 (Mo.App.W.D. 1982), caution that we should not risk depriving Feldt of his due process rights—in particular, his right to be free from double jeopardy—by failing to review for sufficiency. Because it is conceivable that the State failed at the first trial to bring sufficient evidence to convict Feldt on Count I, we believe we must review this point, otherwise we would, as observed by the Arkansas Supreme Court in *Harris v. State*, 681 S.W.2d 334, 335 (Ark. 1984), “ignore the protection intended by the double jeopardy clause as interpreted in *Burks*.” *State v. Wood*, 596 S.W.2d 394 (Mo.banc 1980) and its progeny do not stand in the way of this review, because in this case our grounds for reversal for trial error are unrelated to the admissibility of evidence, and our consideration of the sufficiency of the evidence does not prejudice the State or Feldt.

Opinion by: James M. Dowd, P.J.

Kurt S. Odenwald, J., and Gary M. Gaertner, Jr., J., concur.

Attorney for Appellant: Srikant Chigurupati

Attorney for Respondent: Christine Lesicko

<p>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</p>
